

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FRANK CARBONE, ANDREW CORZO,
SAVANNAH ROSE EKLUND, SIA HENRY,
ALEXANDER LEO-GUERRA, MICHAEL
MAERLENDER, BRANDON PIYEVSKY, KARA
SAFFRIN, and BRITTANY TATIANA WEAVER,
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE
OF TECHNOLOGY, UNIVERSITY OF CHICAGO,
THE TRUSTEES OF COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK, CORNELL
UNIVERSITY, TRUSTEES OF DARTMOUTH
COLLEGE, DUKE UNIVERSITY, EMORY
UNIVERSITY, GEORGETOWN UNIVERSITY, THE
JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS
INSTITUTE OF TECHNOLOGY, NORTHWESTERN
UNIVERSITY, UNIVERSITY OF NOTRE DAME DU
LAC, THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA, WILLIAM MARSH RICE
UNIVERSITY, VANDERBILT UNIVERSITY, and
YALE UNIVERSITY,

Defendants.

Case No. 1:22-cv-00125

Hon. Matthew F. Kennelly

**ORDER REGARDING SCOPE
OF EXPERT DISCOVERY**

Plaintiffs and Defendants (together, the “Parties”), through their respective counsel of record, stipulate to the following regarding the scope of expert discovery in this matter (the “Action”), subject to approval by the Court. The Court approves as indicated by entry of this Order.

1. To the extent that this Stipulation imposes limitations on discovery that would otherwise be available under the Federal Rules of Civil Procedure or this Court’s standing orders, the Parties have agreed to those limitations to increase the efficiency of their dealings with testifying experts and to minimize discovery disputes regarding testifying experts. Neither the terms of this Stipulation nor the Parties’ agreement to them shall be considered an admission by any person that any of the information restricted from discovery by this Stipulation would otherwise be discoverable or admissible.

2. For purposes of the Action, the requirements of Fed. R. Civ. P. 26(a)(2)(B)(ii) shall be limited to “the facts, data, and other information relied on by the witness in forming the opinions to be expressed.”

3. For purposes of this Action, the requirements of Fed. R. Civ. P. 26(b)(4)(C)(ii) shall be limited to “the facts, data or other information that the party’s attorney provided and that the expert relied on in forming the opinions to be expressed.”

4. Except as required by Paragraphs 2, 3, 5, 6, or 7 below, the following types of information are not discoverable and need not be disclosed or logged by any Party:

- a. the content of written and oral communications solely among and between:
 - i. counsel and the expert and/or the expert’s staff and/or supporting firms;
 - ii. counsel and any non-testifying expert consultant and/or the consultant’s staff;
 - iii. the expert and other experts and/or other non-testifying expert consultants;

- iv. the expert and the staff of other experts and/or other non-testifying expert consultants;
 - v. experts and their staff and/or supporting firms;
 - vi. non-testifying expert consultants and their staffs; and
 - vii. the respective staffs and/or supporting firms of experts or non-testifying expert consultants and the staffs and/or supporting firms of other experts or non-testifying expert consultants.
- b. notes, drafts, written communications, preliminary or intermediate calculations, summaries, computations or other data runs, or other types of non-final work created by, for, or at the direction of a testifying expert or consultant, including draft Fed. R. Civ. P. 26(a)(2)(B) expert reports, affidavits, exhibits, or declarations; or copies of materials produced by any Party bearing the notes, markings, or comments of a testifying or non-testifying expert consultant, or their staff, assistants, or clerical help, or attorneys for the Party or Parties.
- c. any comments, whether oral or written, related to a report, declaration, or affidavit or draft report, declaration, or affidavit of a testifying expert prepared in connection with this litigation by (i) counsel for a Party retaining the testifying expert; (ii) counsel working with counsel for a Party retaining the testifying expert; (iii) any testifying expert's staff, assistants, or clerical help, or supporting firms; (iv) a non-testifying expert or consultant; (v) a non-testifying expert's or consultant's staff, assistants, or clerical help, or supporting firms; (vi) any other testifying expert; or (vii) any other testifying expert's staff, assistants, or clerical help, or supporting firms.
- d. any information concerning fees paid or to be paid to experts or consultants, with the exception of (i) a testifying expert's hourly rate, (ii)

total hours personally billed by a testifying expert in this litigation, and (iii) any other consideration or compensation received or to be received by a testifying expert and his or her entity, if any, in connection with work done in this litigation. For the avoidance of doubt, invoices submitted by experts or consultants shall not be discoverable.

5. The limitations contained in paragraph 4 above shall not apply to any communications, documents, data sets, data runs, calculations, computations, or other forms of information or work upon which a testifying expert relies as a basis for any of his or her opinions or reports.

6. The limitations contained in paragraph 4 above do not affect any obligation under the Federal Rules that an expert might otherwise have to respond to questions at deposition regarding: (a) alternative analyses, methodologies, or approaches to issues on which an expert is testifying, regardless of whether the expert considered them in forming the expert's opinion, (b) the hourly rates of the testifying expert and his or her staff, (c) the amount of time that the testifying expert and his or her staff has spent on the expert's report and the expert's associated work, and (d) the amount of money billed for the work of the testifying expert and his or her staff, if any.

7. Within three business days of any party serving any expert report and/or expert declaration pursuant to Fed. R. Civ. P. 26(a)(2)(B), the party or Parties proffering the expert witness shall produce the facts, data, and other information required for disclosure under Fed. R. Civ. P. 26(a)(2)(B)(ii) (as modified by Paragraph 2). "Facts, data, and other information relied upon" shall be deemed to include, but will not be limited to, underlying data, spreadsheets, computerized regression analysis, computer code to generate the empirical results and/or other underlying reports and schedules sufficient to reconstruct the work, calculations, and/or analyses that the expert relied upon in forming the opinions to be expressed.

8. The information required by paragraph 7 above to be produced shall be produced electronically (via email, disc, or FTP site) where feasible. Data, statistical analyses, or other

information (including any calculation or exhibit) upon which an expert relies for any of the expert's opinion(s) in this matter shall be provided in machine readable format, including any data that has been cleaned, reformatted, or modified in any way from the form in which it may have been provided to the expert. All other documents, data, and other information relied upon shall be provided in a format as agreed to by the Parties, shall identify any software and instructions required to read them and shall provide such software unless prohibited by license agreement terms, provided that no party need produce computer software that is reasonably and commercially available (*e.g.*, Microsoft Word, Excel). Documents that are publicly available need not be produced absent specific request if they are identified with sufficient specificity to allow the opposing side to locate and obtain the document. Documents that have previously been produced during discovery need not be produced if they are identified by Bates number.

9. The disclosure obligations of paragraph 7 above do not apply to any demonstrative exhibits that a testifying expert may seek to use at hearings or trial. Instead, the disclosure of any such demonstrative exhibits shall be governed by any orders governing such hearings or the Final Pretrial Order. The use of any such demonstrative exhibits shall otherwise be subject to the Federal Rules of Evidence, the Federal Rules of Civil Procedure, and this Court's Local Rules and standing orders, unless otherwise provided by order of the Court.

10. No subpoenas (for depositions or documents) need or shall be served on any individual based on the individual's role as a testifying expert. Instead, the party proffering such expert and the expert will, without a subpoena, (a) produce all of the materials and information called for in paragraph 7 above, and (b) make the expert available for deposition at a time mutually agreed to by the Parties and consistent with the Court's scheduling orders.

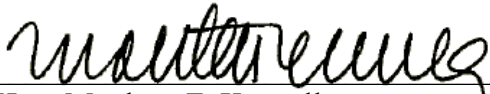
11. Nothing in this Stipulation shall permit a party or a testifying expert to withhold any proposition, fact, belief, or other data, information, or material on which the expert relies in support of the expert's opinion(s) in the Action.

12. Nothing in this Stipulation shall limit or waive any Party's rights to object for any reason to the admission of any Party's expert testimony into evidence or to the qualification of any person to serve as an expert witness.

13. The Parties agree to comply with this Stipulation pending the Court's approval or rejection of it.

IT IS SO ORDERED.

DATED: 9/17/2022



Hon. Matthew F. Kennelly
UNITED STATES DISTRICT JUDGE

Dated: September 16, 2022

Respectfully submitted,

By: /s/ Edward J. Normand
Edward J. Normand
Peter Bach-y-Rita
ROCHE FREEDMAN LLP
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-970-7513
tnormand@rochefreedman.com
pbachyrita@rochefreedman.com

Robert D. Gilbert
Elpidio Villarreal
Alexis Marquez
GILBERT LITIGATORS &
COUNSELORS, P.C.
11 Broadway, Suite 615
New York, NY 10004
Tel: 646-448-5269
rgilbert@gilbertlitigators.com
pdvillarreal@gilbertlitigators.com

Eric L. Cramer
Caitlin G. Coslett
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: 215-875-3000
ecramer@bm.net
ccoslett@bm.net

Daniel J. Walker
Robert E. Litan
Hope Brinn
BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006
Tel: 202-559-9745
rlitan@bm.net
dwalker@bm.net

Elizabeth A. Fegan

By: /s/ Kenneth Kliebard
Kenneth Kliebard
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive
Suite 2800
Chicago, IL 60606-1511
Tel: 312-324-1000
kenneth.kliebard@morganlewis.com

Jon R. Roellke
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
Tel: 202-739-5754
jon.roellke@morganlewis.com

Sujal Shah
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower, 28th Floor
San Francisco, CA 94105-1596
Tel: 415-442-1386
sujal.shah@morganlewis.com

Counsel for Defendant Brown University

By: /s/ Deepti Bansal
Deepti Bansal
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004-2400
Tel: 202-728-7027
dbansal@cooley.com

Alex Kasner
COOLEY LLP
3175 Hanover Street
Palo Alto, CA 94304
Tel.: 650-843-5770
akasner@cooley.com

Matthew Kutcher
COOLEY LLP

FEGAN SCOTT LLC
150 S. Wacker Dr., 24th floor
Chicago, IL 60606
Tel: 312-741-1019
beth@feganscott.com

Brooke Achua
FEGAN SCOTT LLC
140 Broadway
46th Floor
New York, NY 10005
Tel.: 646- 502-7910
brooke@feganscott.com

Counsel for Plaintiffs

444 W Lake Street
Suite 1700
Chicago, IL 60606
Tel: 312-881-6500
mkutcher@cooley.com

*Counsel for Defendant California Institute of
Technology*

By: /s/ James L. Cooper
James L. Cooper
Michael Rubin
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave, NW
Washington, DC 20001-3743
Tel: 202-942-5014
james.cooper@arnoldporter.com
michael.rubin@arnoldporter.com

Leah Harrell
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Tel.: 212-836-7767
Leah.Harrell@arnoldporter.com

Valarie Hays
ARNOLD & PORTER KAYE SCHOLER LLP
70 W Madison Street
Suite 4200
Chicago, IL 60602
Tel.: 312-583-2440
valarie.hays@arnoldporter.com

Counsel for Defendant University of Chicago

By: /s/ Patrick Fitzgerald
Patrick Fitzgerald
Amy Van Gelder
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
155 N. Wacker Drive
Chicago, IL 60606-1720
Tel: 312-407-0508
patrick.fitzgerald@skadden.com
amy.vangelder@skadden.com

Karen Hoffman Lent
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
One Manhattan West
Room 40-216
New York, NY 10001-8602
Tel: 212-735-3276
karen.lent@skadden.com

*Counsel for Defendant The Trustees of
Columbia University in the City of New York*

By: /s/ Norm Armstrong
Norm Armstrong
Christopher Yook
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, D.C. 20006
Tel.: 202-626-8979
narmstrong@kslaw.com
cyook@kslaw.com

Emily Chen
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036
Tel: 212-556-2224
echen@kslaw.com

Zachary T. Fardon
KING & SPALDING LLP
110 N Wacker Drive
Suite 3800
Chicago, IL 60606
312 764 6960
zfardon@kslaw.com

Counsel for Defendant Cornell University

By: /s/ Terri L. Mascherin

Terri L. Mascherin
Reid J. Schar
JENNER & BLOCK LLP
353 N. Clark Street,
Chicago, IL 60654-3456
Tel: 312-222-9350
tmascherin@jenner.com
rschar@jenner.com

Ishan K. Bhabha
Douglas E. Litvack
Lauren J. Hartz
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Tel: 202-637-6327
ibhabha@jenner.com
dlitvack@jenner.com
lhartz@jenner.com

*Counsel for Defendant Trustees of Dartmouth
College*

Christopher D. Dusseault
Rachel S. Brass
Jacqueline Sesia
GIBSON DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Tel: 213-229-7000
cdusseault@gibsondunn.com
rbrass@gibsondunn.com
jsesia@gibsondunn.com

By: /s/ Derek Ludwin
Christopher D. Dusseault
Rachel S. Brass
Jacqueline Sesia
GIBSON DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Tel: 213-229-7000
cdusseault@gibsondunn.com
rbrass@gibsondunn.com
jsesia@gibsondunn.com

By: /s/ Casey T. Grabenstein
Casey T. Grabenstein
James A. Morsch
Elizabeth A. Thompson

SAUL EWING ARNSTEIN & LEHR
161 N. Clark St.
Chicago, IL 60601
Tel.: 312-876-7810
casey.grabenstein@saul.com

Counsel for Defendant Duke University

By: /s/ Tina M. Tabacchi
Tina M. Tabacchi
JONES DAY
110 North Wacker Drive
Suite 4800
Chicago, IL 60606
Tel.: 312-782-3939
tmtabacchi@jonesday.com

Craig A. Waldman
Hashim M. Moopan
Christopher N. Thatch
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113
Tel.: 202-879-3877
cwaldman@jonesday.com
hmmoopan@jonesday.com
cthatch@jonesday.com

Counsel for Defendant Emory University

By: /s/ Britt M. Miller
Britt M. Miller
Jed W. Glickstein
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
Tel: 312-783-0600
bmiller@mayerbrown.com
jglickstein@mayerbrown.com

Stephen M. Medlock
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006-1101
Tel: 202-263-3221
smedlock@mayerbrown.com

Counsel for Defendant Georgetown University

By: /s/ Jeffrey J. Bushofsky
Jeffrey J. Bushofsky
ROPES & GRAY LLP
191 North Wacker Drive 32nd Floor
Chicago, IL 60606-4302
Tel: 312-845-1200
jeffrey.bushofsky@ropesgray.com

Chong S. Park
Samer M. Musallam
ROPES & GRAY LLP
2099 Pennsylvania Avenue, NW
Washington, DC 20006-6807
Tel: 202-508-4600
chong.park@ropesgray.com
samer.musallam@ropesgray.com

Counsel for Johns Hopkins University

By: /s/ Eric Mahr

Eric Mahr

Jan Rybnicek

Daphne Lin

FRESHFIELDS BRUCKHAUS DERINGER

US LLP

700 13th Street, NW

Washington, DC 20005

Tel: 202-777-4500

eric.mahr@freshfields.com

jan.rybnicek@freshfields.com

daphne.lin@freshfields.com

*Counsel for Massachusetts Institute of
Technology*

By: /s/ Scott D. Stein

Scott D. Stein

Benjamin R. Brunner

Kelsey Annu-Essuman

SIDLEY AUSTIN LLP

One South Dearborn Street

Chicago, IL 60603

Tel.: 312-853-7000

sstein@sidley.com

bbrunner@sidley.com

kannuessuman@sidley.com

Counsel for Northwestern University

By: /s/ Robert A. Van Kirk

Robert A. Van Kirk

Jonathan Pitt

Sarah F. Kirkpatrick

Matthew D. Heins

Cole T. Wintheiser

WILLIAMS & CONNOLLY LLP

680 Maine Avenue, SW

Washington, D.C. 20024

Tel: 202-434-5163

rvankirk@wc.com

jpitt@wc.com

skirkpatrick@wc.com

mheins@wc.com

cwintheiser@wc.com

James Peter Fieweger
MICHAEL BEST & FRIEDRICH LLP
444 West Lake Street
Suite 3200
Chicago, IL 60606
Tel.: 312-222-0800
jpfieweger@michaelbest.com

Counsel for University of Notre Dame du Lac

By: /s/ Seth Waxman
Seth Waxman
WILMER CUTLER PICKERING HALE
AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
Tel: 202-663-6800
seth.waxman@wilmerhale.com

David Gringer
Alan Schoenfeld
WILMER CUTLER PICKERING HALE
AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel: 212-937-7294
david.gringer@wilmerhale.com
alan.schoenfeld@wilmerhale.com

Daniel Martin Feeney
Edward W. Feldman
MILLER SHAKMAN LEVINE &
FELDMAN LLP
180 North LaSalle Street
Suite 3600
Chicago, IL 60601
Tel.: 312-263-3700
dfeeney@millershakman.com
efeldman@millershakman.com

*Counsel for The Trustees of the University of
Pennsylvania*

By: /s/ Norm Armstrong
Norm Armstrong
Christopher Yook
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, D.C. 20006
Tel.: 202-626-8979
narmstrong@kslaw.com
cyook@kslaw.com

Emily Chen
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036
Tel: 212-556-2224
echen@kslaw.com

Zachary T. Fardon
KING & SPALDING LLP
110 N Wacker Drive
Suite 3800
Chicago, IL 60606
312 764 6960
zfardon@kslaw.com

Counsel for William Marsh Rice University

By: /s/ J. Mark Gidley
J. Mark Gidley
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005-3807
Tel: 202-626-3600
mgidley@whitecase.com

Robert A. Milne
David H. Suggs
WHITE & CASE LLP
1221 Avenue of the Americas
New York, NY 10020-1095
Tel: 212-819-8200
rmilne@whitecase.com
dsuggs@whitecase.com

Counsel for Vanderbilt University

By: /s/ Charles A. Loughlin
Charles A. Loughlin
Benjamin F. Holt
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
Tel: 202-637-5600
chuck.loughlin@hoganlovells.com
benjamin.holt@hoganlovells.com

Stephen Novack
Stephen J. Siegel
Serena G. Rabie
NOVACK AND MACEY LLP
100 North Riverside Plaza, 15th Floor
Chicago, IL 60606-1501
Tel.: 312-419-6900
snovack@novackmacey.com
ssiegel@novackmacey.com
srabie@novackmacey.com

Counsel for Yale University